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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/489,929	01/24/2000	Richard A. Lodge	9-13528-77US	6470

20988 7590 08/22/2003

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EXAMINER
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TRAN, PABLO N

ART UNIT	PAPER NUMBER
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2685

DATE MAILED: 08/22/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/489,929	LODGE ET AL.
	Examiner	Art Unit
	Pablo N Tran	2685

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 May 2003.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-18,21-38 and 41-52 is/are rejected.
- 7) Claim(s) 19,20,39,40,53 and 54 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)            | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. . | 6) <input type="checkbox"/> Other: _____ .                                   |

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments with respect to claims 1-54 have been considered but are moot in view of the new ground(s) of rejection.
2. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 2685

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-18,21-38, and 41-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Bergenlid et al.* (5,535,429) in view of *Knight* (5,07,006).

As per claims 1, 21, and 41, *Bergenlid et al.* disclosed a base station (fig. 1/item BS) being adapted for bi-directional data communications with one or more wireless terminals (fig. 1/item MS1..MSn) over a respective bi-directional wireless data communication links wherein the base station identify a poorly performing link and interrupting data transmission over the poorly performing wireless link (abstract, col. 2/ln. 29-36, col. 4/ln. 31-56).

*Bergenlid et al.* do not specifically disclosed the communication link is temporary interrupting. *Knight* disclosed such method of temporary ceased radio channel (see abstract, col. 2/ln. 20-24, col. 3/ln. 56-col. 4/ln. 2). Since *Bergenlid et al.* and *Knight* both teach channel allocation for the mobile communication system, it would have been obvious to one of ordinary skill in the art to provide such method of temporary interrupting communication link, as disclosed in *Knight*, to the communication system of *Bergenlid et al.* in order to efficiently allocate channel and alleviated disruption of communication link.

As per claims 2, 22, and 42, *Bergenlid et al.* disclosed monitoring one or more performance parameters related to each wireless link and comparing each monitoring

performance parameters to a respective predetermined threshold (col. 8/ln. 5-16, col. 8/ln. 42-64).

As per claims 3-4, 13, 23-24, 33, 43-44, and 49, *Bergenlid et al.* disclosed the performance parameters related to each wireless link are based on interference on the wireless link and comprises any one or more of a S/N ratio, a user data throughput rate, a C/I ratio, a BER ratio, or a number of suspend frames (col. 5/ln. 39-67).

As per claims 5, 25, and 45, *Bergenlid et al.* do not explicitly disclosed an average, taken over a number of successive burst, of any one or more of the S/N ratio, the C/I ratio, the user data throughput rate, or the BER ratio. However, such is notoriously well known in the art that the examiner takes Official Notice of such. Therefore, it would have been obvious to one of ordinary skill in the art to provide such method to take an average measurement of such performance parameter, well known, to the method of disconnecting an establish communication connection in a mobile radio system of *Bergenlid et al.* to provide an utmost accurate measurement prior to disconnected the poorly performance wireless link.

As per claims 6, 14, 26, 34, 46, and 50, *Bergenlid et al.* disclosed suspending transmission of a data frame over the poorly performing wireless link (col. 7/ln. 48-col. 8/ln. 64).

As per claims 7 and 27, *Bergenlid et al.* disclosed resuming transmission of the data frame after a delay period (abstract, col. 2/ln. 29-36).

As per claims 8, 16, 28, 36, *Bergenlid et al.* disclosed the delay period is of random length (col. 2/ln. 29-36, col. 7/ln. 48-col. 8/ln. 64).

As per claims 9, 17, 29, 37, 47, and 51, *Bergenlid et al.* disclosed maintaining a count of dropped frames (col. 7/ln. 48-col. 8/ln. 64).

As per claims 10, 18, 30, 38, 48, and 52, *Bergenlid et al.* disclosed suspending transmission if the count of suspended frames exceeds a predetermined threshold (col. 7/ln. 48-col. 8/ln. 64).

As per claims 15 and 35, *Bergenlid et al.* disclosed re-transmitting the dropped frame after a delay period (col. 7/ln. 48-col. 8/ln. 64).

As per claim 11 and 31, *Bergenlid et al.* disclosed restarting the transmission after a delay period (col. 7/ln. 48-col. 8/ln. 64).

As per claims 12 and 32, *Bergenlid et al.* disclosed the delay is of random length (col. 7/ln. 48-col. 8/ln. 64).

### ***Allowable Subject Matter***

5. Claims 19-20, 39-40, and 53-54 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Yao et al.* (5,983,114) disclose method for transmission disruption in a radiotelephone system.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pablo Tran whose telephone number is (703)308-7941. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Hunter, can be reached at (703)308-6732.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:**

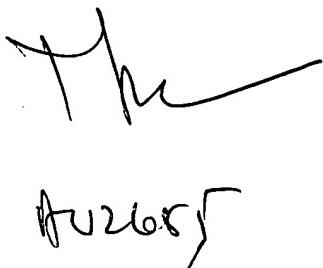
**(703) 872-9314 (for Technology Center 2600 only)**

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

PABLO N. TRAN  
PATENT EXAMINER

August 19, 2003

  
A handwritten signature in black ink, appearing to read "PABLO N. TRAN". Below the signature, there is a handwritten mark consisting of a stylized letter 'T' followed by a vertical line and a small bracket-like shape.